

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JIMMIE G. STEWART,**

**Plaintiff,**

**vs.**

**Civil Action No. 2:08 CV 119  
(Maxwell)**

**MICHAEL J. ASTRUE,  
COMMISSIONER OF SOCIAL SECURITY,**

**Defendant.**

**ORDER**

It will be recalled that the above-styled social security appeal was instituted on December 3, 2008, with the filing of a Complaint by the Plaintiff, Jimmie G. Stewart.

It will further be recalled that the case was referred to United States Magistrate Judge David J. Joel in accordance with Rule 83.12 of the Local Rules of General Practice and Procedure.

On March 2, 2009, a Motion For Summary Judgment was filed on behalf of the Plaintiff, and on March 31, 2009, a Motion For Summary Judgment was filed on behalf of the Defendant.

On August 27, 2009, Magistrate Judge Joel entered a Report And Recommendation wherein he recommended that the Plaintiff's Motion For Summary Judgment be denied; that the Defendant's Motion For Summary Judgment be granted; and that the decision of the Administrative Law Judge be affirmed. In said Report And Recommendation, the parties were directed, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e) of the Federal Rules of Civil Procedure, to file any written objections

thereto with the Clerk of Court within ten (10) days after being served with a copy of said Report And Recommendation. Magistrate Judge Joel's Report And Recommendation expressly provided that a failure to timely file objections would result in waiver of the right to appeal from a judgment of this Court based thereon.

The docket in the above-styled civil action reflects that the Plaintiff's Objections And Exceptions To Report And Recommendation Of The Magistrate Judge Denying Plaintiff's Motion For Summary Judgment were filed on September 3, 2009.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985).

As previously noted, on September 3, 2009, the Plaintiff filed his Objections And Exceptions To Report And Recommendation Of The Magistrate Judge Denying Plaintiff's Motion For Summary Judgment. The Court has conducted a *de novo* review only as to the portions of the Report and Recommendation to which the Plaintiff objected. The remaining portions of the Report And Recommendation to which the Plaintiff has not objected have been reviewed for clear error.

The Court finds that the Plaintiff has not, in his Objections, raised any issues that were not thoroughly considered by Magistrate Judge Joel in said Report And Recommendation. The Court is of the opinion that Magistrate Judge Joel's Report and Recommendation accurately reflects the law applicable to the facts and circumstances

before the Court in the above-styled action. Accordingly, it is

**ORDERED** that Magistrate Judge Joel's August 27, 2009, Report And Recommendation (Docket No. 16) be, and is hereby, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that:

1. The Defendant's Motion For Summary Judgment (Docket No. 14) is **GRANTED**;
2. The Plaintiff's Motion For Summary Judgment (Docket No. 11) is **DENIED**;
3. The decision of the Administrative Law Judge is **AFFIRMED**; and
4. The above-styled civil action is **DISMISSED** and **RETIRED** from the docket of this Court.

Pursuant to Rule 58 of the Federal Rules of Civil Procedure, the Clerk of Court is directed to enter a separate Judgment Order affirming the decision of the Defendant.

The Clerk of Court is directed to transmit copies of this Order and the Judgment Order to counsel of record.

**ENTER:** December 7, 2009

/s/ Robert E. Maxwell  
United States District Judge